

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROLANDO JESSE DAZA-CORTEZ,

Defendant-Petitioner,

v.

UNITED STATES OF AMERICA,

Plaintiff-Respondent.

NO. C18-1608RAJ
(CR15-269RAJ)

UNITED STATES' ANSWER TO
AMENDED PETITION FILED
UNDER 28 U.S.C. § 2255
("PETITIONER'S RESPONSE TO
GOVERNMENT'S RESPONSE")

Exhibit 7

Declaration of Prior Counsel Emily Gause

May 11, 2021

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

v.

ROLAND JESSE DAZA-CORTEZ,

Defendant- Plaintiff.

No. C18-1608RAJ
(CR15-269RAJ)

DECLARATION OF PRIOR COUNSEL
EMILY M. GAUSE

I, Emily M. Gause, do hereby declare:

1. I was attorney of record for Roland Daza-Cortez from June 21, 2016 to July 24, 2017.
2. I am in receipt of Mr. Daza-Cortez's briefing in support of 28 U.S.C. 2255 motion, and the Court's February 22, 2021 order granting an evidentiary hearing.
3. The Court has asked the following questions:
 - a. Do I have in my possession any file notes regarding communications with Mr. Daza-Cortez regarding plea offers and expiration dates.
 - i. Answer – yes.
 - b. Do I have any additional evidence regarding my communications orally or in writing?
 - i. Answer – yes.

c. Do I have facts or evidence that can help answer the Court's inquiry into whether there is a reasonable probability that Mr. Daza-Cortez would have accepted the offer before any expiration date?

i. Answer – yes.

4. Attached to this declaration are several emails, handwritten notes, and typed notes from meetings with Mr. Daza-Cortez. I have also consulted with my calendar to verify dates and times that I met with Mr. Daza-Cortez during the relevant time periods articulated in the Court's April 27, 2021 Order (Dkt. No. 26), January 1, 2017 to March 15, 2017.

5. Between January 1, 2017 and March 15, 2018, I met with Mr. Daza-Cortez no less than eleven times. Our meetings occurred at the Federal Detention Center on:

- 1/4/2017 – one hour
- 1/11/2017 (with Lorraine Barrick) – two hours
- *See Exhibit 1, January 2017 invoice from Lorraine Barrick*
- 1/13/17 – ½ hour
- 1/20/17 – two hours
- 1/23/17 – two hours
- 1/24/17 – 1.5 hours
- 1/26/17 – two hours
- 2/6/17 – one hour
- 2/13/17 – one hour
- 2/19/17 – one hour
- 3/7/17 – one hour
- 3/9/17 – pretrial motion hearing (meetings before/after)
- 3/10/17 – pretrial motion hearing (meetings before/after)

6. During these meetings, most of which were one hour or more each, we discussed aspects of Mr. Daza-Cortez's case, discovery review, disputed facts, plea negotiations, preparation of pretrial motions, preparation of a forensic accounting report by expert Lorraine Barrick, investigation by his hired investigator Greg Walsh, and trial preparation.

- 1 7. In addition to these in-person meetings, Mr. Daza-Cortez often called me from the
2 FDC and we would have lengthy phone conversations.
- 3 8. On January 20, 2017, my handwritten notes from our meeting reflect clear
4 instructions from Mr. Daza-Cortez about what he would be willing to accept in a
5 plea offer. He asked me to begin negotiation discussions with the Government. He
6 was clear he would not agree to plead to any counts involving gun possession,
7 money laundering, or anything associated with the Scion car. During this meeting,
8 Mr. Daza-Cortez endorsed a 5-year mandatory minimum, with a government cap
9 at 84 months (7 years). This offer was to accept responsibility for just the drugs, no
10 guns, and limiting the forfeiture amount. Mr. Daza-Cortez was clear about his
11 parameters for what he would accept versus not accept in plea negotiations. We
12 discuss this at length. *See Exhibit 2, Meeting Notes.*
- 13 9. On January 23, 2017, I had a telephonic meeting with AUSA Sarah Vogel and Andy
14 Colosurdo. I articulated the endorsed offer from Mr. Daza-Cortez. My notes from
15 this phone call are attached as **Exhibit 3, Negotiation Meeting Notes.**
- 16 10. On January 24, 2017, my notes reflect discussion on investigation and pretrial
17 motion preparation. Mr. Daza-Cortez asked our investigator to conduct important
18 investigation steps, such as calling certain witnesses and taking photographs.
19 During this meeting, I shared Lorraine Barrick's report with him and provided him
20 a copy. We discussed how to use Ms. Barrick's report to negotiate a return of his
21 business, Avocado's Restaurant. During our discussions on this day, we reviewed
22 the plea offer that Mr. Daza-Cortez endorsed, that I communicated to the
23 Government yesterday. This offer was to a custodial range of 5-7 years to accept
24 responsibility for just the drugs, no guns, and limiting the forfeiture amount. Mr.
Daza-Cortez was clear about his parameters for what he would accept versus not
accept in plea negotiations. We discuss this at length. *See Exhibit 4, Meeting
Notes.*
- 11 11. On January 25, 2017, the Government offer a plea deal to a five-year mandatory
12 minimum with a sentencing range of 7-9 years. *See Exhibit 5, Email Plea Offer
from Government.* The Government created a deadline of January 31, 2017, just
13 six days after the communication of the offer.

1 12. The next morning, I went to the FDC to share this plea offer with Mr. Daza-Cortez.
2 I spent two hours with him reviewing the pros and cons of this deal. During this
3 conversation, we discussed the possible pretrial motions I could file. I told him that
4 pretrial motions were tough to win in federal court. I also explained that our best
5 bargaining power would be before pretrial motions were litigated and how moving
6 to a motion hearing could result in worse plea offers from the government later. I
7 explained that the government was in charge with whatever plea offer it chose to
8 give, and that the offers could get better or worse with negotiation. I provided Mr.
9 Daza-Cortez a copy of the Government's email which carefully laid out the terms
10 and reasons. Mr. Daza-Cortez was not satisfied with the terms, and remained firm
11 on his position from prior meeting that he would not accept responsibility for any
12 money laundering counts, the Toyota Scion, or forfeiture of the Escalade car. He
13 did make several concessions on some of the financial aspects of the resolution, but
14 he would not agree to a 7-9 year sentencing range. I could not find notes from this
15 meeting.

16 13. That evening (1/26/17), I summarized Mr. Daza-Cortez's position to the
17 Government in a lengthy email. I told them I would make myself available for a
18 plea hearing before January 31, 2017, but that I would also be prepared to ask for a
19 short extension of the pretrial motions deadline to allow us more time to negotiate.
20 **Ex. 5.** While my schedule was open between January 26 and 31 for a plea hearing,
21 I had pre-scheduled plans (with pre-paid flights) to watch my brother graduate from
22 Air Force Basic Training on February 1, 2017.

23 14. The next day, (1/27/17 – a Friday), the Government responded and refused to make
24 additional concessions. It kept the custodial range at 7-9 years. **Exhibit 6.**

15 15. On Monday 1/30/17, I spoke with Mr. Daza-Cortez by phone. I shared the revised
16 offer with him. I remember reading the email word for word to him. Mr. Daza-
17 Cortez was willing to make financial concessions but continued to believe that 7-
18 8.5 years was too high of a sentence. He also felt very pressured given the time
19 constraints. The initial offer occurred 5 days prior and he was feeling stressed to
20 make big decisions without the benefit of speaking to his family. He also wanted
21 me to share the details of the plea offers with his family members. I agreed to do

1 so. Mr. Daza-Cortez instructed me to offer addition financial concessions but only
2 if the Government reduced the custodial time. I continued to repeat his position
3 and advocate for him in these plea negotiation emails. **Exhibit 7.**

4 16. The next day, (1/31/17), the Government changed the plea offer slightly. It kept
5 many provisions the same but amended the custodial time from 7-9 years to 7-8.5
6 years. It agreed that if Mr. Daza-Cortez would accept the terms of the plea deal by
7 February 1, 2017, he could enter the plea by February 6, 2017, to accommodate my
8 travel schedule. **Exhibit 8.**

9 17. On January 31, 2017, I spoke with Mr. Daza-Cortez on the phone. I explained the
10 new change in the plea deal. I read – word for word – the new email from the
11 Government. Mr. Daza-Cortez was quite upset with the Government’s tone,
12 specifically the sentence that read “we will not make a single additional change to
13 the plea agreement; do not ask or the offer is off the table.” **Ex. 8.** He said this was
14 unfair, and was angry given the many issues he still had with certain provisions of
15 the agreement. I also shared the Government’s agreement to allow him to enter a
16 plea on Monday, January 6, but that he must give me an answer accepting by
17 February 1, 2017. I encouraged Mr. Daza-Cortez to take the deal. I told him I was
18 worried this was the best deal he would get, and he should not reject it. Mr. Daza-
19 Cortez was upset that he must make a decision before consulting with his family. I
20 warned him that the Government could take away the offer if we do not accept it.
21 He would not provide me with a decision on accepting or rejecting the offer until
22 he could speak with his family.

23 18. Also on January 31, 2017, I emailed with Mr. Daza-Cortez’s family and arranged
24 for a phone call with them on February 1, 2017.

19 19. On February 1, 2017, I spoke with Mr. Daza-Cortez by phone again and encouraged
20 him to accept the plea deal. He continued to express anxiety and frustration over
21 the rushed time frame and asked me to request additional time.

22 20. On February 1, 2017, I sent an email to the Government explaining my client’s
23 position. I asked to be able to review the new plea agreement and terms in person
24 with Mr. Daza-Cortez on February 6, 2017 when I returned, prior to giving an
answer to their offer. I also asked for the time so he could consult with his family.

1 I never received an email back from either AUSA affirming my request or denying
2 it. I assumed that this meant the “firm deadline” of February 1, 2017 was extended
3 until 1:00 on Monday February 6, 2017 as I proposed. **Exhibit 9.**

4 21. I spoke with Mr. Daza-Cortez’s sister and niece on February 1 and again on
5 February 2, 2017. I told them that my advice was that Mr. Daza-Cortez accept the
6 plea offer. I shared the exposure that Mr. Daza-Cortez if he went to trial and lost
7 (15-year mandatory minimum and a very high sentencing range in excess of 300
8 months). I offered to send them an email summarizing the offer and options. I did
9 so on February 3, 2017. **Exhibit 10.** I explained that I would see Mr. Daza-Cortez
10 on the morning o February 6, and that he would have to make a firm decision one
11 way or another that morning. The family was aware that the plea offer was set to
12 expire on February 1, 2017 but that I had asked to have until February 6, 2017 so
13 that my client could talk to his family. I encouraged his family to help him come
14 to a clear decision. I repeated several times that my advice was that he take the plea
15 offer.

16 22. On Monday, February 6, I met with Mr. Daza-Cortez at the FDC for about 45
17 minutes. I presented him with printed copies the latest plea negotiation emails. We
18 walked through the terms of the deal. I explained the options and I urged him to
19 accept the deal. I repeated that the deadline to accept the plea offer was February
20 1, 2017 and had expired, but that I had asked for additional time as Mr. Daza-Cortez
21 instructed. I explained that I told the AUSA I would give her a firm answer by 1:00
22 PM today. This is captured in handwritten notes from this meeting, attached as
23 **Exhibit 11.** I told Mr. Daza-Cortez that the Government was firm and that they
24 had explained this was their very “best deal” to him. Mr. Daza-Cortez knew that
pretrial motions were to be filed that evening and focused much attention on what
issues we would raise if we rejected the offer and litigated motions. He reiterated
his firm line for what he would plead to. At the end of this meeting, Mr. Daza-
Cortez made his decision to reject the offer and move forward to pretrial motions.
He also wanted to discuss evidentiary issues and facts related to the pretrial
motions. He gave me instructions for our investigator to contact certain witnesses.

1 I also shared with him new discovery we received that was related to our pretrial
2 motions.

3 23. Whenever I met with Mr. Daza-Cortez to discuss any plea offers, I would always
4 print copies of the communications with the Government and share a copy with him
5 to read as we discussed. Within those emails is explicit language about the terms
6 and deadlines. During our meetings, we almost always went over every line
7 together. This is my practice with all clients. (Note: Daza-Cortez admits he read
8 the plea offer during this meeting, and that I “explained a little bit of those things.”)
9 *See* Dkt. No. 5-2, pg. 31.

10 24. During our February 6, 2017 meeting where Mr. Daza-Cortez chose to reject the
11 offer, I was rushing out to be able to communicate with the AUSA as I promised
12 by 1:00 PM. He remembered this and spoke about it during his sentencing hearing.
13 Dkt. No. 5-2, pg. 31.

14 25. On February 6, 2017, following my client’s wishes, I rejected the Government’s
15 offer. **Exhibit 12.**

16 26. In the weeks leading up to February 6, 2017, I prepared nine pretrial motions and
17 filed them later that evening.

18 27. The following week, on February 13, 2017, I met with Mr. Daza-Cortez again. Our
19 entire meeting was focused on evidence and preparation for pretrial motions. He
20 did not mention the prior plea offer or indicate any desire to take a plea deal. *See*
21 **Exhibit 13, Handwritten Notes.**

22 28. On February 19, 2017, we discussed financial issues related to the money
23 laundering charges, including information in Lorraine Barrick’s report. We also
24 discussed providing additional discovery. Mr. Daza-Cortez did not bring up any
desire to continue engaging in negotiations. *See* **Exhibit 14, Handwritten Notes.**

25 29. Also on February 19, 2017, I provided the family with an update about the case
including that Mr. Daza-Cortez chose not to accept the 7-8.5 year offer from the
Government. I updated about the motions filed and pretrial motion hearing
scheduled. *See* **Exhibit 15.**

30. I met with Mr. Daza-Cortez on March 7, 2017. My notes from this meeting are
attached as **Exhibit 16.** I brought copies of all of the motions, responses, and

1 replies. During this meeting, he asked me to talk to the Government about
2 negotiations again. We were just days before his pretrial motion hearing. He asked
3 if we could get the prior offer of 7-8.5 years back on the table. I told him that was
4 unlikely given that he rejected the last offer. I discussed with him the need to come
5 up from his last position of a firm 5-7 years. He endorsed an agreed 7-year offer.
6 I shared that with the Government. They rejected the offer. *See Exhibit 17.* Then,
7 they refused to discuss any additional plea offers until after the motion hearing.

8 31. After the motion hearing was complete on March 10, 2017 (a Friday), and the Court
9 denied all of our motions, the AUSAs communicated an offer of an agreed ten
10 years, but they wanted Mr. Daza-Cortez to accept the offer that same day. I again
11 shared these terms and the deadline with Mr. Daza-Cortez. He again balked at the
12 rush and refused to make big decisions about a guilty plea with only a few hours to
13 consider it. He asked to be able to speak with his family before agreeing. I again
14 told him that was risky and that the Government made it clear they would increase
15 the sentence if he did not accept by today. **Exhibit 18.** Mr. Daza-Cortez refused
16 to accept or reject this plea offer and instead said he would have an answer for me
17 on Monday.

18 32. I sent an email to Mr. Daza-Cortez's family about this and urged them to help him
19 make a decision quickly. **Exhibit 19.**

20 33. On Monday, March 13, 2017 early in the morning, I finally heard from Mr. Daza-
21 Cortez and he gave me permission to accept the plea offer. I communicated this to
22 AUSA Sarah Vogel. However, given the deadline to plea on Friday, March 10, the
23 plea terms changed. **Exhibit 20, Emails on Plea Offer.** I was not able to review
24 the new plea terms with my client until I arrived at the Seattle Courthouse around
1:45 PM before a 2:30 PM schedule plea hearing. It was quite stressful and Mr.
Daza-Cortez felt pressured. He also felt afraid to reject the plea given the history
of this case, and the deals continuing to get worse. He was apprehensive and upset
to accept the plea offer, but none-the-less wanted to do so. I reviewed the entire
plea agreement with him again in person and ensured he understood all paragraphs.
We entered the plea that afternoon.

1 34. I updated the family on the guilty plea and expressed my feelings about
2 disappointment he did not take the 7-8.5 year offer. **Exhibit 21.**

3 35. After the plea hearing and before the sentencing hearing, Mr. Daza-Cortez started
4 to treat me poorly. He accused me of doing a poor job at the pretrial hearing and
5 blamed me for losing the motions. On April 18, 2017, after a particularly difficult
6 meeting with him, I dictated a summary of the meeting into an email to myself to
7 have a record of what happened and when. A copy of that email is attached as
8 **Exhibit 22.** (Note: there are grammatical errors due to voice dictation).

9 36. After this meeting, Mr. Daza-Cortez apologized and asked me to remain as counsel
10 for him through sentencing. I agreed to remain his attorney until he could obtain
11 new counsel.

12 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE
13 STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND ACCURATE TO
14 THE BEST OF MY KNOWLEDGE.

15 SIGNED on this 11th day of May, 2021 in SEATTLE, WA.

16 

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